



REPORT/RECOMMENDATION

To: MAYOR AND COUNCIL	Agenda Item <u>VI.D</u>	
From: Jeff Long	<input checked="checked" type="checkbox"/>	Action
Chief of Police	<input type="checkbox"/>	Discussion
Date: June 19, 2012	<input type="checkbox"/>	Information
Subject: Cocina Del Barrio Appeal of Administrative Penalty		

ACTION REQUESTED:

Follow the administrative penalty matrix listed in Edina City Ordinance 900.15 subd (3) and uphold the \$1000.00 fine and three day liquor license suspension for this second violation within 24 months.

Edina City Ordinance 900.15 subd.(8) reads: **Computation of Violations**, Any violation which has occurred within twenty-four (24) months of the current violation shall be counted.

This is the second violation for Cocina Del Barrio within six months.

INFORMATION/BACKGROUND:

On May 15, 2012 a server at Cocina Del Barrio, 5036 France Ave, served beer to an 18 year old male despite looking at the legitimate Driver's License of the 18 year old. In all capital letters above the picture, the Driver's License has printed "UNDER 21". This is the second liquor ordinance violation for this establishment.

Additional Background:

Cocina Del Barrio was mailed a letter on April 16th, 2012 alerting them that the City of Edina would be sending decoys into restaurants within 60 days, under the age of 21, who will attempt to purchase alcohol. A packet of pictures showing sample "under 21" licenses, along with descriptors of how to read the licenses, was included in the packet. A copy of the letter is attached to this report.

The protocol for the compliance checks is straight forward with no attempt to hide the decoys age. The inspections are performed to ensure that our establishments are compliant with city ordinances and state statutes. It is our experience that underage

drinkers will lie in order to obtain alcohol and it is important that the servers actually inspect the license given to them.

On May 15, 2012 an eighteen year old, male, decoy entered Cocina Del Barrio and sat at the bar with two “plain clothes” officers. The bartender approached the three individuals and asked all three for their ID’s. All three people handed their true ID’s to the bartender, who looked at each one and handed them back. The two adults and the 18 year old then ordered individual beers. The bartender then served each person, which included a glass of Coors Light to the 18 year old.

When the server was advised that he had just sold to an underage person, he stated he thought the date on the driver’s license said “1983”. However, as stated above, the driver’s license says “UNDER 21”.

This is the second alcohol ordinance violation in six months for this restaurant.

Cocina Del Barrio currently has a probationary liquor license that was issued in April 2012 after they failed to meet the food-to-alcohol sales of 60 percent food to 40 percent alcohol. That was the first violation for Barrio. In addition to the probationary liquor license they were also fined \$500.00. A stipulation to the license was that City staff would complete a monitoring visit after six months.

Edina City Ordinance 900.14 subd. (8) is titled “**Computation of Violations**”. It states the following: “Any violation which has occurred with twenty-four (24) months of the current violation shall be counted”. The key word is “any”; they do not need to be the same violation.

The penalty for this, as a second violation of the liquor ordinance within 24 months, is a \$1000.00 fine and three day suspension of the liquor license. The establishment has paid the \$1000.00 fine. I recommend that the City Council uphold the three day suspension.

In addition to the administrative fine, the server has been charged with a gross misdemeanor violation of Furnishing Alcohol to a Person Under 21 years old.

RESOLUTION NO. 2012-89
DENYING APPEAL ON SELLING OR FURNISHING
ALCOHOL TO AN UNDERAGE PERSON

Section 1. BACKGROUND.

- 1.01 On May 15, 2012, a server was issued a citation for serving alcohol to an underage person at the Cocina Del Barrio restaurant, 5036 France Ave.
- 1.02 The server asked for identification from the police decoy, which showed that the decoy was under 21 years old. The other two people in the group were also asked for their ID's, however they were over 21.
- 1.03 The driver licenses were handed back to the group, including the "under 21" drivers license. The server then served the beer.

Section 2. FINDINGS

- 2.01 An employee of Cocina Del Barrio did serve alcohol to an individual under 21 years old.
- 2.02 A driver's license was presented showing that one of the people he was serving was under 21 years old.
- 2.03 Serving alcohol to a minor is a gross misdemeanor violation of state statute 340A.503.
- 2.04 State Statute 340A.415 addresses the civil penalty relating to this violation.
- 2.05 Edina City Ordinance 900. 15 adopts statute 340A.415 as part of the Edina City Code.
- 2.06 Edina has a penalty matrix for violation which is in compliance with the guidelines set by State Statute and City Code.
- 2.07 Cocina Del Barro has one prior violation within the past 24 months. Because this is their second violation they must pay a \$1000.00 fine and have their liquor license suspended for three days.

Section 3. DENIAL

NOW THEREFORE, it is hereby resolved that the City Council of the City of Edina, denies the Appeal of the Administrative Penalty for Cocina Del Barrio and upholds the penalty of \$1000.00 and a liquor license suspension of three days.

Adopted by the City Council of the City of Edina, Minnesota, on June 19, 2012.

ATTEST: _____
Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of June 19, 2012, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this ____ day of _____, 2012.

Letter to Liquor Establishments and Attachments



City of Edina

Chief Jeff Long
Edina Police Department

April, 2012

Notice of Alcohol Compliance Inspections

To: Managers of all Edina establishments licensed to sell alcoholic beverages

During the next 60 days, the Edina Police Department will be conducting alcohol compliance inspections in all public establishments licensed to sell alcoholic beverages in the city of Edina. The police department is mandated by the city council to conduct more than one such inspection per calendar year.

Plainclothes police officers, along with persons under 21 years of age, will enter each establishment and order or attempt to purchase alcoholic beverages. We are trying to ensure that all wait staff and sales clerks are checking IDs and refusing sales to persons under 21. Please review your Alcohol Service policy with your employees. Remember, **persons under 21 will have a Minnesota driver license or ID card that bears a black stripe across the top with the words "under 21" embossed on the card.** The adult (over 21) driver license bears a red stripe across the top. We have had previous violations where the server has looked at the under 21 license and still served the underage person.

Along with service of alcohol to persons under 21, officers will be checking for other compliance issues, such as:

- Current liquor, beer & wine, or 3.2 beer license prominently displayed
- State of MN placard outlining warnings to pregnant women and criminal penalties for DWI
- Persons in possession of or consuming alcoholic beverages outside the physical boundaries of the licensed establishment
- Service of alcoholic beverages to obviously intoxicated persons

The mission of the police department's inspection program is to provide verification to the city council that Edina's liquor ordinance is being observed, so that the citizens can in turn be assured that the youth of our city will not have access to alcohol through restaurants and stores in Edina. We would like to be able to report to the council that we had no violations during this upcoming inspection period.

We hope this notification is helpful in reducing the number of violations. Please feel free to call me or our alcohol/tobacco compliance officer, Sgt. Tom Draper (952-826-1601), with any questions or concerns.

Edina Police Department
4801 West 50th Street
Edina, Minnesota
55424-1394

Administration (952) 826-1610
Fax (952) 826-1607
Police 24 hr. and TDD Line (952) 826-1600

Minnesota Department of Public Safety Drivers' Licenses and Identification Cards

Effective December 15, 2004



Standard Driver's License



Under 21 Standard Driver's License



Instruction Permit



Under 18 Provisional Driver's License



Identification Card



Under 21 Identification Card



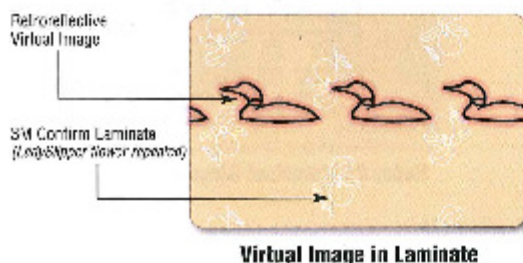
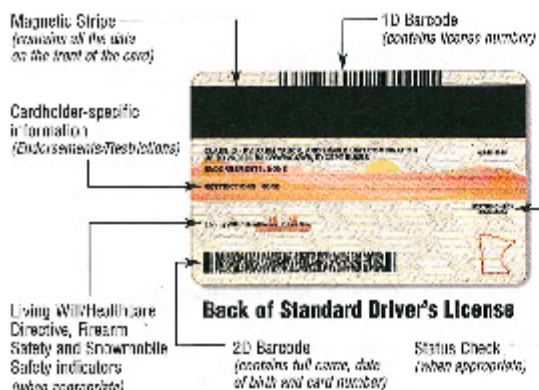
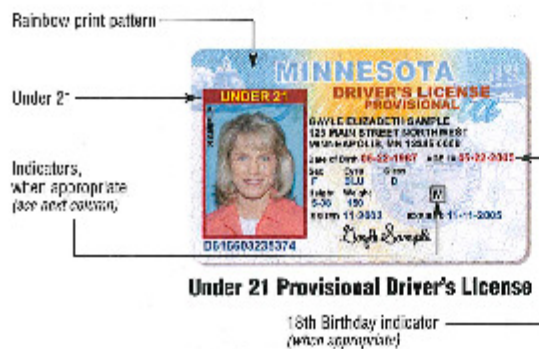
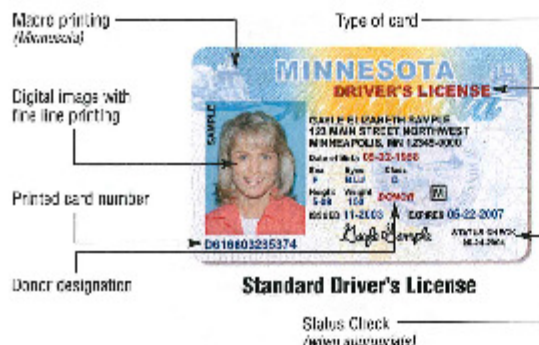
Standard Commercial Driver's License



Under 21 Motorized Bicycle Permit



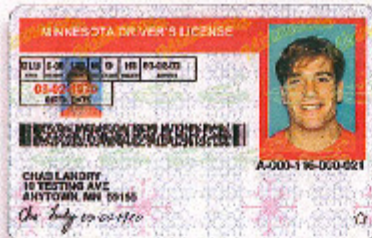
DPS
Driver
Vehicle Services



- Each card is the size and shape of a standard credit card but is more flexible and has a somewhat different texture.
- On the front of the card, a virtual image of a loon appears to float above or sink below the surface as the viewing angle changes.
- A digital image of the cardholder is fused with heat into the card plastic. Fine line printing over the image reveals tampering attempts. The image always appears on the left.
- A red border around the image indicates "Under 21."
- If the cardholder is under 18, date of 18th birthday appears in red.
- "Status Check" indicates a temporary visitor to the United States and the date the cardholder's authorized presence in this country is expected to end.
- Information, including restrictions and endorsements, is specific to each cardholder.
- A holographic state seal that appears on the front of the card is visible only under ultraviolet light.
- Indicators on front of card:
 - A** Metro Mobility
 - T** Senior Citizen Public Transit Reduced Fare
 - L** Limited Mobility
 - M** Medical Alert
 - P** Standby or Temporary Custodian

Minnesota Department of Public Safety
 Driver and Vehicle Services
 444 Cedar Street
 St. Paul, MN 55101
www.mndriveinfo.org

**Minnesota Department of Public Safety
Driver's Licenses and Identification Cards**
Effective January 31, 2000



Over 21 Standard Driver's License



Under 21 Standard Driver's License
21st Birthday under 2D Bar Code
18th Birthday under 2D Bar Code



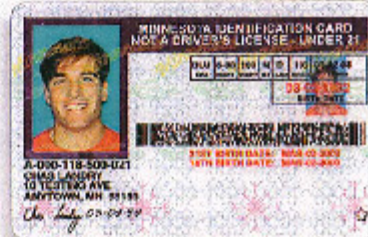
Over 21 Motorized Bicycle Permit



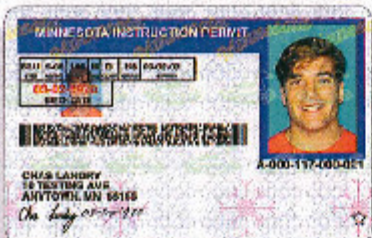
Provisional Driver's License
21st Birthday under 2D Bar Code
18th Birthday under 2D Bar Code



Over 21 Identification Card



Under 21 Identification Card
21st Birthday under 2D Bar Code
18th Birthday under 2D Bar Code



Instruction Permit



B Card

Please Note: The holographic loops will be seen only under ultraviolet light or if the card has been duplicated.
18th Birthday will be listed on Under 21 cards if applicable.

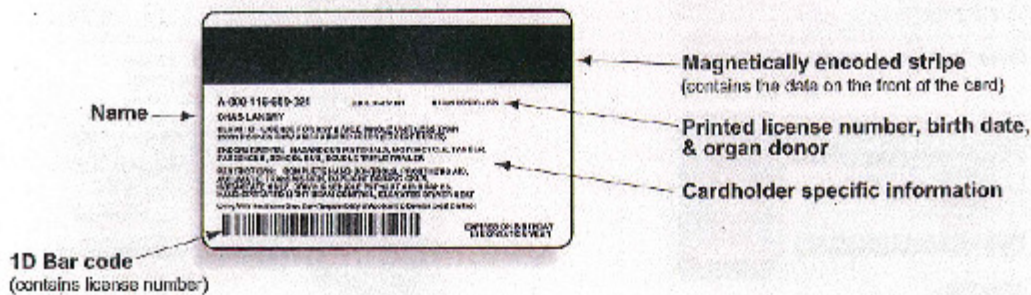
Over 21 Standard Driver's License



Under 21 Standard Driver's License



Back of Standard Driver's License



- ☐ A digital image of the cardholder is fused with heat into the card's plastic.
- ☐ A colored border around the digital image prevents replacement and reveals tampering attempts.
- ☐ Each card has the size, shape, and flexibility of a standard credit card.
- ☐ The driver's license number and the date of birth appear five times each on the license. All must match for validation.
- ☐ Two bar codes and a magnetically encoded stripe contain identification data.
- ☐ Coded information, including restrictions and endorsements, is specific to each cardholder.

- ☐ Two holographic designs on the front of the card include the word "Minnesota" and snowflakes. This prevents photocopying and fraudulent reproduction.
- ☐ "Under 21" versions feature the digital image of the cardholder on the left front and the cardholder's 21st birth date (and 18th birth date, if applicable) underneath the 2D Bar Code. "Over 21" versions feature the digital image on the right.

- I** = Senior Citizen Public Transit Reduced Fare
- L** = Limited Mobility **M** = Medical Alert
- B** = Requires B Card **P** = Designated Care Giver

PENALTY MATRIX

900.15 Sanctions for License Violations.

Subd. 1 **Purpose.** The purpose of this Subsection is to establish a standard by which the Council shall determine the length of license suspensions and the propriety of revocations. This section shall apply to all premises licensed under this Section and the penalties herein shall be presumed to be appropriate. The Council may deviate from the presumptive penalty when it finds that there exists extenuating or aggravating reasons to deviate, including, but not limited to a licensee's efforts, in combination with the state or the city, to prevent the sale of alcohol of minors. When deviating from these standards, the Council shall provide written findings supporting the penalty selected.

Subd. 2 **Hearing Notice.** No sanction under this Subsection shall take effect until the licensee has been given the opportunity for a hearing has been held in accordance with M.S. 340A.415 and M.S. 14.57 to 14.69 of the Administrative Procedures Act. The Council may appoint a hearing examiner or may conduct a hearing itself. The hearing notice shall be given at least ten (10) days prior to the hearing, include notice of the time and place of the hearing, and state the nature of the charges against the licensee. For first violations, for which the presumptive penalty is a fine, the license holder may, at any time prior to the hearing, pay the fine and waive the right to a hearing.

Subd. 3 Presumed Penalties for Violations.

Type of Violation	1st Violation	2nd Violation	3rd Violation	4th Violation
Commission of a felony related to the licensed activity	Revocation	N/A	N/A	N/A
Sale of alcoholic beverages while license is under suspension	Revocation	N/A	N/A	N/A
Adult entertainment	Revocation	N/A	N/A	N/A
Sale of intoxicating liquor where only licensed for 3.2 percent malt liquor	Revocation	N/A	N/A	N/A
Refusal to allow City inspectors or	\$1,000.00 fine and 3 day	\$2,000.00 fine and 7 day	Revocation	N/A

police admission to inspect premises	suspension	suspension		
Sale of alcoholic beverages to underage person	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 and 7 day suspension	Revocation
After/before hours sale of alcoholic beverage	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
After hours consumption of alcoholic beverages	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000 fine and 7 day suspension	Revocation
Illegal gambling or prostitution on premises	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
Sale of alcoholic beverage to obviously intoxicated person	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
Allowing a disorderly establishment	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
Person under 18 serving liquor	\$500.00 fine	\$1,000.00 fine and 3 day suspension	\$2,000.00 fine and 7 day suspension	Revocation
Failure to display liquor license	Warning letter	\$500.00 fine	\$1,000.00 fine	\$1,500.00 fine
Failure to meet requirement of 60% of gross receipts from sale of food and non-alcoholic beverages	\$500 fine; a twelve month probationary license; development of a plan to achieve compliance within one year, with a	\$1,000 fine; a twelve month probationary license; development of a plan to achieve compliance within one year, with a	Revocation and license holder is barred from holding future liquor licenses for a period of not more than twenty four months.	

	monitoring visit at 6 months.	monitoring visit at 6 months.		
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Subd. 4 **Other Penalties.** When the penalty for violations of this Section or an applicable statute, ordinance, or rule regarding alcoholic beverages is without a presumptive penalty, the penalty shall be determined by the Council.

Subd. 5 **Multiple Violations.** At a licensee's first appearance before the Council, the Council must act upon all of the violations that have been alleged in the notice sent to the licensee. The Council shall consider the presumptive penalty for each violation under the first appearance column in this Subsection. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the Council's discretion.

Subd. 6 **Subsequent Violations.** A violation occurring after the notice of hearing has been mailed, but prior to the hearing, must be treated as a separate violation and dealt with as a second appearance before the Council, unless the Manager and licensee agree in writing to add the violation to the first appearance. The same procedure applies to the second, third, or fourth appearance.

Subd. 7 **Subsequent Appearances.** Upon a second or subsequent appearance before the Council by the same licensee, the Council shall impose the presumptive penalty for the violation or violations giving rise to the particular violation or violations that were the subject of the prior appearance. However, the Council may consider the amount of time elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this Subsection.

Subd. 8 **Computation of Violations.** Violations are computed as follows:

- A. Any violation which has occurred within twenty-four (24) months of the current violation shall be counted.
- B. Nothing in this Subsection shall restrict or limit the authority of the Council to suspend a license up to sixty (60) days, revoke the a license, impose a civil fee not to exceed \$2,000.00, to impose conditions on a license, or take any other action in accordance with law, provided that the license holder has been afforded an opportunity for a hearing in the manner provided under this Subsection.